

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-160828-05

Date: DECEMBER 11, 2006

Re:

Legend

Taxpayer A	-
Taxpayer B	-
Trust	-
Date	-
Year 1	-
Year 2	-
Year 3	-
Year 4	-
Year 5	-
Year 6	-
Accounting Firm	-
Law Firm	-

Dear _____ :

This letter is in response to a letter dated November 29, 2005 from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an allocation of Taxpayers' generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date in Year 1, prior to 2001, Taxpayer A established Trust. Under the terms of

Trust, there is a possibility that a generation-skipping transfer (GST) may occur. Taxpayer A and Taxpayer B (Taxpayers) were married when Trust was established and each spouse made gifts to Trust. The gifts were reported on timely filed separate Form 709, United States Gift (and Generation-Skipping Transfer) Tax Returns and Taxpayers elected to split the gifts under § 2513. However, neither Taxpayer A nor Taxpayer B allocated their respective GST exemptions to the transfers.

In Year 2, Taxpayer A and Taxpayer B made additional transfers to Trust. In Year 6, Taxpayers filed late Form 709s reporting the transfer as made by Taxpayer A with an election to split the gifts. Taxpayers did not allocate their respective GST exemptions to the transfers. The Form 709s for Year 2 filed in Year 6 were prepared by Law Firm, Taxpayers current representative.

In Year 3, Taxpayer A made an additional transfer to Trust. In Year 5, Taxpayers filed late Form 709s reporting the transfer as made by Taxpayer A with an election to split the gifts. Taxpayers did not allocate their respective GST exemptions to the transfers. The Form 709s for Year 3 filed in Year 5 were prepared by Law Firm.

In Year 4, Taxpayer A and Taxpayer B divorced. Taxpayer A made an additional transfer to Trust. In Year 4, Taxpayer hired Accounting Firm to assist in the transfer and filing of Taxpayer A's Form 709. Accounting Firm inadvertently failed to allocate Taxpayer A's GST exemption to the transfer.

Taxpayer A and Taxpayer B request relief for an extension of time to make an allocation of their respective GST exemptions to the transfers to Trust made in Year 1, Year 2, and Year 3. In addition, Taxpayer A requests relief for an extension of time to make an allocation of his available GST exemption to the transfer to Trust in Year 4.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides, in part, that under § 2642(g)(1)(B), the time for electing out of the automatic allocation rules is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an election described in § 2632(c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in §§ 2642(b)(1) or (b)(2) or an election described in §§ 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(iii) provides that the taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

We conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer A and Taxpayer B are each granted an extension of time of 60 days from the date of this letter to make allocations of their GST exemptions to Trust for their respective transfers in Year 1, Year 2, and Year 3. In addition, Taxpayer A is granted an extension of time of 60 days from the date of this letter to make an allocation of his available GST exemption to Trust for Year 4. Supplemental Forms 709 should be filed for Taxpayer A and Taxpayer B for Year 1, Year 2, and Year 3, and for Taxpayer A for Year 4. Each Form 709 should include a Notice of Allocation properly allocating the taxpayer's GST exemption to the transfers to Trust. The allocations will be effective as of the respective dates of the transfers to Trust, and the inclusion ratio of Trust will be determined based on the value of the transfers to Trust as determined for federal gift tax purposes and the amount of exemption allocated to Trust. A copy of this letter should be attached to each individual or supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. Copies are included for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes
2 Copies of this letter